Supreme Court, U.S.
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93-608

No. 93-

Supreme Court of the United States

Term October 1993

Roger W. Knight, petitioner

v.

Royanne M. Knight, and Kathryn L. Kafka in her capacity as Assistant Attorney General of the State of Washington, respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I. Questions Presented For Review

A. Does the irrebuttable presumption doctrine apply to presumptions in child support statutes when challenged as violation of the Fourteenth Amendment Due Process Clause? Specifically:

(a) presumption in RCW 26.19 that parent without custody of child must pay some support, such presumption completely irrebuttable?

(b) presumption in RCW 26.19 as to the level of support to be paid at each given level of income, fact of irrebuttability assumed *arguendo* in appeal of summary judgment?

(c) presumption in RCW 74.20A that parent without custody of a child placed on public assistance must pay support to the state for the alleged benefit of the child, such presumption completely irrebuttable?

B. Are RCW 26.19 and RCW 74.20A bills of attainder prohibited to the States by Article I Section 10 clause 1 of the Constitution?

II. Table of Contents

I. Questions Presented For Review i
II. Table of Contents ii
III. Table of Authorities ii
IV. Decision Below 1
V. Statement of Grounds For Jurisdiction of this Court 1
VI. Laws Involved in this Case 1
VII. Statement of the Case 5
VIII. Argument for the Allowance of the Writ . . . 7
A. Irrebuttable Presumption, Due Process 7
B. Bill of Attainder 12
IX. Conclusion 15

III. Table of Authorities

Table of Cases

Aptheker v. Secretary of State,(1964) 378 U.S. 500, 12 L. Ed. 2d. 992, 84 S. Ct. 1659 . . . . p. 7
Bell v. Burnson,(1971) 402 U.S. 535, 29 L. Ed. 2d. 90, 91 S. Ct. 1586 . . . . . p. 8
Calder v. Bull,(1798) 3 U.S. (3 Dall.) 386, 1 L. Ed. 648 . . . . . p. 14
Carrington v. Rash,(1965) 380 U.S. 89, 13 L. Ed. 2d. 675, 85 S. Ct. 775 . . . . . p. 7
Cleveland Board of Education v. LaFleur, (1974) 414 U. S. 632, 39 L. Ed. 2d. 52, 94 S. Ct. 791 . . . . . pp. 8, 10

Craig v. Boren,(1976) 429 U.S. 190,
50 L. Ed. 2d. 397, 97 S. Ct. 451 . . . . . p. 8
Cummings v. Missouri,(1867) 71 U. S.
(4 Wall.) 277, 18 L. Ed. 356 . . . . . p. 12
Ex parte Garland,(1867) 71 U.S.
(4 Wall.) 333, 18 L. Ed. 366 . . . . . p. 12
Fuentes v. Shevin,(1972) 407 U.S. 67,
32 L. Ed. 2d. 556, 92 S. Ct. 1983 . . . . . p. 8
Hampton v. Mow Sun Wong,(1976) 426
U.S. 88, 48 L. Ed. 2d. 495, 96 S. Ct. 1895 . . . . . p. 8
Heiner v. Donnan,(1932) 285 U.S. 312,
76 L. Ed. 772, 52 S. Ct. 358 . . . . . pp. 7, 9
Hoeper v. Tax Commission,(1931) 284
U.S. 206, 76 L. Ed. 248, 52 S. Ct. 358 . . . . . pp. 7, 9
Jimemez v. Weinberger,(1974) 417 U. S.
628, 41 L. Ed. 2d. 363, 94 S. Ct. 2496 . . . . . pp. 8, 9
Knight v. Commissioner,(1992)
64 T.C.M. 1519 . . . . . p. 10
Matthews v. Lucas,(1976) 427 U. S. 495,
49 L. Ed. 2d. 651, 96 S. Ct. 2755 . . . . . pp. 8, 9
Michael H. v. Gerald D.,(1989) 491 U. S.
110, 105 L. Ed. 2d. 91, 109 S. Ct. 2333 . . . . . p. 11
Nixon v. Administrator of General Services,
(1977) 433 U.S. 425, 53 L. Ed. 2d. 867,
97 S. Ct. 2777 . . . . . p. 13
Owens v. Ivey,(1988)
525 N.Y.S. 2d. 508 . . . . . pp. 13, 14
P.O.P.S. v. Gardner,(CA9 1993)
998 F. 2d. 764 . . . . . pp. 1, 6, 7, 11, 12, 15

Reed v. Reed,(1971) 404 U.S. 71,
30 L. Ed. 2d. 225, 92 S. Ct. 251 . . . . . pp. 8, 9, 10
Rivera v. Minnich,(1987) 483 U.S. 574,
97 L. Ed. 2d. 473, 107 S. Ct. 3001 . . . . . pp. 12, 14
Shapiro v. Thompson,(1969) 394 U.S. 618,
22 L. Ed. 2d. 600, 89 S. Ct. 1322 . . . . . pp. 7, 8
Skinner v. Oklahoma,(1942) 316 U.S. 535,
86 L. Ed. 1655, 62 S. Ct. 1820 . . . . . p. 7
Stanley v. Illinois,(1972) 405 U.S. 645,
31 L. Ed. 2d. 551, 92 S. Ct. 1208 . . . . . pp. 8, 9, 10
Sugarman v. Dougall,(1973) 413 U.S. 634,
37 L. Ed. 2d. 853, 93 S. Ct. 2842 . . . . . p. 8
Trimble v. Gordon,(1977) 430 U.S. 762,
52 L. Ed. 2d. 31, 97 S. Ct. 1459 . . . . . pp. 8, 9
United States v. Brown,(1965) 381 U.S.437,
14 L. Ed. 2d. 484, 85 S. Ct. 1707 . . . . pp. 12, 13, 14
United States v. Lovett,(1946) 328 U.S.303,
90 L. Ed. 1252, 66 S. Ct. 1073 . . . . . pp. 12, 14
United States Department of Agriculture
v. Murry, (1973) 413 U.S. 508,
37 L. Ed. 2d. 767, 93 S. Ct. 2832 . . . . . pp. 8, 9, 10
Usery v. Turner Elkhorn Mining Co.,
(1976) 428 U.S. 1, 49 L. Ed. 2d. 752,
96 S. Ct. 2882 . . . . . p. 10
Vlandis v. Kline,(1973) 412 U.S. 441,
37 L. Ed. 2d. 63, 93 S. Ct. 2230 . . . . . pp. 8, 10
Weber v. Aetna Casualty & Surety Co.,
(1972) 406 U.S. 164, 31 L. Ed. 2d. 768,
92 S. Ct. 1400 . . . . . pp. 8, 9

Weinberger v. Salfi,(1975) 422 U.S. 749,
45 L. Ed. 2d. 522, 95 S. Ct. 2457 . . . . . pp. 10, 11
Zablocki v. Redhail,(1978) 434 U.S. 374,
54 L. Ed. 2d. 618, 98 S. Ct. 673 . . . . . p. 9

Table of Laws

Constitution of the United States

Article I Section 10 Clause 1 . . . . . pp. i, 1, 2
Fifth Amendment . . . . . p. 7
Ninth Amendment . . . . . p. 2
Fourteenth Amendment . . . . . pp. i, 2, 7

Laws of the United States

26 U.S.C. § 152(e) . . . . . p. 10
28 U.S.C. § 1254(1) . . . . . p. 1
28 U.S.C. §1291 . . . . . p. 6
28 U.S.C. §1331. . . . . p. 6
28 U.S.C. §1343(a) . . . . . p. 6
42 U.S.C. §657 . . . . . p. 4
42 U.S.C. §1983 . . . . . p. 6

Laws of the State of Washington

RCW 26.19 . . . . . pp. i, 2, 3
RCW 74.20A . . . . . pp. i, 3, 4, 5

Other Authorities

Holy Bible, Laws of Ancient Israel
Exodus 20:14, Adultery Commandment . . . . . p. 11

IV. Decision Below

The memorandum below is noted on the Table on 996 F. 2d. 1225. The opinion in *P.O.P.S. v. Gardner*,(CA9 1993) 998 F. 2d. 764 is cited in the memorandum below, App. p. 3.

V. Statement of Grounds For Jurisdiction of this Court

The memorandum below was filed by the court of appeals on June 15, 1993. The Petition for Rehearing was denied on August 17, 1993. This Petition for Writ of Certiorari is presented within 90 days of the denial of the Petition for Rehearing. This Court has jurisdiction to review this decision provided by 28 U.S.C. §1254(1).

VI. Laws Involved in this Case

Provisions of the United States Constitution

Article I Section 10 Clause 1

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of

Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Ninth Article of Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fourteenth Article of Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Revised Code of Washington

RCW 26.19.020

Child support economic table

MONTHLY BASIC SUPPORT OBLIGATION PER CHILD

For income less than $600 the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than $25 per child per month.

Combined monthly net income $1,800

Three children family, $251 per child per month

The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars.

RCW 74.20A.010

Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of the courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor

children shall be augmented by additional remedies directed at the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs.

RCW 74.20A.030

(1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a superior court order or RCW 74.20A.055. Distribution of any support moneys shall be made in accordance with 42 U.S.C. Sec. 657.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

RCW 74.20A.057

A support obligation arising under the statutes or common law of this state binds the responsible parent, present in this state, regardless of the presence or residence of the custodian or children.

VII. Statement of the Case

On July 11, 1991, Mrs. Knight through her attorney Stephen C. Pierren presented a Decree of Dissolution to the ex parte commissioner in King County Superior Court in *In re Marriage of Knight*, No. 90-3-04471-1.

On that same day, Mr. Knight filed a Complaint in the United States District Court for

the Western District of Washington, No. C91-949Z, alleging that the dissolution decree is an action under color of state law that deprived him of his federal rights. District court had subject matter jurisdiction provided by 42 U.S.C. §1983, 28 U.S.C. §1331, and 28 U.S.C. §1343(a)(3) and (4).

On November 18, 1991, the district court granted defendant's motions for summary judgment. App. pp. 9-19.

On January 31, 1992, the district court denied Mr. Knight's motion for new trial and granted part of his motion to amend judgment. App. pp. 5-8.

On February 11, 1992, Mr. Knight appealed to the Ninth Circuit Court of Appeals, No. 92-35173. The court of appeals had jurisdiction under 28 U.S.C. §1291.

On June 15, 1993, the court of appeals filed the memorandum affirming the district court's decision. App. pp. 2-4, 996 F. 2d. 1225.

On July 29, 1993, the court of appeals filed the opinion in *P.O.P.S. v. Gardner*,(CA9 1993) 998 F. 2d. 764, which is cited in the *Knight* memorandum, App. p. 3.

On August 17, 1993, Mr. Knight's Petition for Rehearing is denied. App. p. 1.

VIII. Argument for Allowance of the Writ

A. Irrebuttable Presumption, Due Process

P.O.P.S. v. Gardner,(CA9 1993) 998 F. 2d. 764 is cited in the memorandum below as providing the reasons that Mr. Knight's Fourteenth Amendment claims were rejected. App. p. 3. Therefore, the *P.O.P.S.* opinion is incorporated into the *Knight* memorandum.

Because P.C.P.S. elected not to petition this Court for certiorari, Mr. Knight effectively owns the *P.O.P.S.* opinion for the purpose of seeking review.

Heiner v. Donnan,(1932) 285 U.S. 312, 324-329, 76 L. Ed. 772, 52 S. Ct. 358 is the classic decision establishing that irrebuttable presumptions are void as contrary to the requirement for due process of law and that the Fifth and Fourteenth Amendments provide identical protections as to due process.

Heiner, *Hoeper v. Tax Commission*,(1931) 284 U.S. 206, 76 L. Ed. 248, 52 S. Ct. 120 and their progeny: *Skinner v. Oklahoma*,(1942) 316 U.S. 535, 544, 86 L. Ed. 1655, 62 S. Ct. 1820; *Aptheker v. Secretary of State*,(1964) 378 U.S. 500, 511, 12 L. Ed. 2d. 992, 84 S. Ct. 1659; *Carrington v. Rash*, (1965) 380 U. S. 89, 96, 13 L. Ed. 2d. 675, 85 S. Ct. 775; *Shapiro v. Thompson*,(1969)

394 U.S. 618, 631, 22 L. Ed. 2d. 600, 89 S. Ct. 1322; *Bell v. Burnson*,(1971) 402 U.S. 535, 29 L. Ed. 2d. 90, 91 S. Ct. 1586; *Reed v. Reed*,(1971) 404 U.S. 71, 76, 30 L. Ed. 2d. 225, 92 S. Ct. 251; *Stanley v. Illinois*, (1972) 405 U.S. 645, 31 L. Ed. 2d. 551, 92 S. Ct. 1208; *Weber v. Aetna Casualty & Surety Co.*, (1972) 406 U.S. 164, 31 L. Ed. 2d. 768, 92 S. Ct. 1400; *Fuentes v. Shevin*,(1972) 407 U.S. 67, 92-93 note 29, 32 L. Ed. 2d. 556, 92 S. Ct. 1983; *Vlandis v. Kline*,(1973) 412 U.S. 441, 37 L. Ed. 2d. 63, 93 S. Ct. 2230; *United States Department of Agriculture v. Murry*,(1973) 413 U.S. 508, 37 L. Ed. 2d. 767, 93 S. Ct. 2832; *Sugarman v. Dougall*,(1973) 413 U.S. 634, 646-647, 37 L. Ed. 2d. 853, 93 S. Ct. 2842; *Cleveland Board of Education v. LaFleur*, (1974) 414 U.S. 632, 39 L. Ed. 2d. 52, 94 S. Ct. 791; *Jimenez v. Weinberger*,(1974) 417 U.S. 628, 636, 41 L. Ed. 2d. 363, 94 S. Ct. 2496; *Hampton v. Mow Sun Wong*,(1976) 426 U.S. 88, 101 note ~~20, 48 L.~~ Ed. 2d. 495, 96 S. Ct. 1895; *Matthews v. Lucas*,(1976) 427 U.S. 495, 49 L. Ed. 2d. 651, 96 S. Ct. 2755; *Craig v. Boren*,(1976) 429 U.S. 190, 50 L. Ed. 2d. 397, 97 S. Ct. 451; and *Trimble v. Gordan*,(1977) 430 U.S. 762, 770-771, 52 L. 2d. 31, 97 S. Ct. 1459 apply the irrebuttable presumption doctrine to a variety of situations that arise under law.

Particularly relevant to the issue of whether the irrebuttable presumption doctrine applies to child support statutes are *Heiner*, taxes imposed upon property transferred from the parent to the child prior to death of the parent; *Hoeper*, state income tax on wife's separate property payable by husband; *Reed*, gender preference in the administration of an estate of a deceased child; *Stanley*, fitness of an unwed father as parent; *Weber*, *Jimenez*, and *Matthews*, dependence of illegitimate child on deceased father for determining insurance benefits; *Murry*, food stamp eligibility of household that included a 19 year old receiving child support; and *Trimble*, inheritance by intestate succession by illegitimate children.

It is not unreasonable for P.O.P.S. and for Mr. Knight to assert that the irrebuttable presumption doctrine applies to child support statutes when most of the cases establishing the doctrine involve the transfer of property from parent to child or the dependence of the child upon the parent!

Zablocki v. Redhail,(1978) 434 U.S. 374, 390, 395, 402-403, 405-406, 54 L. Ed. 2d. 618, 98 S. Ct. 673 is decided in favor of the noncustodial parent partly because of the irrebuttable presumption that marriage will cause future inability to comply with a support order is determined to be constitutionally defective.

But another line of decisions upheld irrebuttable presumptions as constitutional. A particularly dangerous opinion that Mr. Knight intends to appeal is *Knight v. Commissioner*,(1992) 64 T.C.M. 1519. The Tax Court accepted Mr. Knight's contention that 26 U.S.C. §152(e) creates an irrebuttable presumption that noncustodial parents did not provide over one half of the support of their children if the custodial parent does not sign over the dependency exemption. The Tax Court found that the irrebuttable presumption is constitutional because it is rationally related legitimate purpose of easing administrative burdens of the Internal Revenue Service by eliminating hearings over which parent provided the support. *Knight, supra*, at 1521-1522. This decision is in direct conflict with *Reed* at 404 U.S. 76 and *Stanley* at 405 U.S. 656-657 on these grounds of administrative convenience. It cites *Usery v. Turner Elkhorn Mining Co.*,(1976) 428 U.S. 1, 49 L. Ed. 2d. 752, 96 S. Ct. 2882 and *Weinberger v. Salfi*,(1975) 422 U.S. 749, 45 L. Ed. 2d. 522, 95 S. Ct. 2457 to support its contention that irrebuttable presumptions are permissible in purely economic matters under the rational relationship test.

The Tax Court is thus in conflict with *Murry*, *Vlandis*, and *LaFleur* as to the extent of property

and liberty interests involved. It is a dangerous extension of the recognized exceptions to the irrebuttable presumption doctrine.

As is *P.O.P.S.* at 998 F. 2d. 767. The Ninth Circuit relied on *Michael H. v. Gerald D.*,(1989) 491 U.S. 110, 119, 105 L. Ed. 2d. 91, 109 S. Ct. 2333 and *Salfi, supra* at 422 U.S. 772 to deny the noncustodial parents' group its claim for the protection of the irrebuttable presumption doctrine.

Michael H. involved the liberty interests in the custody and visitation rights of the biological father of a child conceived in an adulterous relationship with a married woman then living with her husband. This Court found that the irrebuttable presumption that the husband is the parent for the purpose of rights and responsibilities with respect to the child is permissible in pursuit of state's interest in preserving the family unit, the welfare of the child, and the traditional policies against adultery. Such policies trace back to ancient Israel, to Exodus 20:14, the Commandment against adultery.

P.O.P.S. is a dangerous extension of *Michael H.* to numerous parents who are legitimate fathers and mothers and have provided considerable **non** monetary support for their children. Most are not guilty of adultery, abuse, or neglect and yet have what Justice Brennan properly called an onerous

burden in his dissent in *Rivera v. Minnich*, (1987) 483 U.S. 574, 583-586, 97 L. Ed. 2d. 473, 107 S. Ct. 3001, heaped on them solely for having lost custody. Neither *Salfi* nor *Usery* involved liberty or property interests as paramount as involved here.

P.O.P.S. incorporated into the *Knight* memorandum creates a dangerous precedent that is direct conflict with the decisions of this Court cited herein. As P.O.P.S. chose not to petition this Court, a writ of certiorari is indicated for Mr. Knight.

B. Bill of Attainder

Irrebuttable presumptions characterized the four laws held by this Court to be bills of attainder. *Cummings v. Missouri*,(1867) 71 U.S.(4 Wall.) 277, 18 L. Ed. 356 invalidated the irrebuttable presumption that those who aided the Confederate States were not fit to practice certain professions, including clergyman. *Ex parte Garland*,(1867) 71 U.S.(4 Wall.) 333, 18 L. Ed. 366 invalidated the irrebuttable presumption that those who aided the Confederate States were not fit to practice law before the courts of the United States. *United States v. Lovett*,(1946) 328 U.S. 303, 90 L. Ed. 1252, 66 S. Ct. 1073 invalidated the irrebuttable presumption that three named individuals were subversives . *United States v. Brown*,(1965) 381

U.S. 437, 14 L. Ed. 2d. 484, 85 S. Ct. 1707 invalidated the irrebuttable presumption that members of the Communist Party posed a risk of political strikes if allowed to be officers or employees of labor unions.

A state court found invalid as a bill of attainder a law that imposed liability for actions of a child upon the parent solely on the basis of the parent and child relationship. Involved was the irrebuttable presumption that the custodial parent contributed to the objectionable behavior of the child. *Owens v. Ivey*,(1988) 525 N.Y.S. 2d. 508, 515-516. At 515 it cites *Nixon v. Administrator of General Services*, (1977) 433 U.S. 425, 475-480, 53 L. Ed. 2d. 867, 97 S. Ct. 2777 in its analysis of whether the statutory sanction is punishment for the purpose of bill of attainder analysis.

Owens boiled the *Nixon* tests for punishment down to:

1. Whether the law requires traditionally recognized punishments.
2. Whether it furthered punitive purposes generally.
3. Whether legislature intended to punish.

Judge John Manning Regan held the New York law unconstitutional as a bill of attainder because it provided a minimum monetary penalty to be paid by the parent, solely on the basis of the

parent and child relationship. Such corruption of blood is a historical dimension of bill of attainder. *Owens, supra* at 515-516.

Child support statutes in their present form clearly meet these tests. They irrebuttably impose what Justice Brennan found in *Rivera, supra* to be an onerous burden. They take property from A and give it to B, which Justice Chase found to be beyond the authority of the legislature in *Calder v. Bull*,(1798) 3 U.S.(3 Dall.) 386, 388, 1 L. Ed. 648. Such a statute, if A is an easily ascertainable group of persons, particularly but not absolutely if such legislative presumption of liability is irrebuttable, is a bill of attainder.

No bill of attainder can by its legislative judgment provide any rational basis for statute or any compelling interest of government; it is the legislative judgment that is forbidden.

In *Lovett, supra* at 328 U.S. 315 and in *Brown, supra* at 381 U.S. 448-449, this Court defined bills of attainder to include:

> Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without judicial trial.

Washington's child support statutes clearly meet this definition. The memorandum's finding that

these laws are not bills of attainder is based on the court of appeals **not** construing the fact of irrebuttability in favor of the nonmoving party. This is inconsistent with the assumption *arguendo* in *P.O.P.S.* The court of appeals finding that a legislature can require a parent to pay **some** support for their children is in direct conflict with every decision cited herein that pertains to bill of attainder or to irrebuttable presumption. See App. p. 3.

Even so, there appears to be no precedents concerning bill of attainder challenges to child support statutes.

This is a case of first impression as to a question of exceptional importance.

A writ of certiorari is thus indicated.

IX. Conclusion

For the reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROGER W. KNIGHT, Plaintiff-Appellant, v. ROYANNE M. KNIGHT and KATHRYN L. KAFKA in her capacity as Assistant Attorney General of the State of Washington, Defendants-Appellees.	) C.A. No. 92-35173) D.C. No. C91-949Z) (Western Washington)) ORDER	

Before: FARRIS, FERGUSON and D. W. NELSON, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing. Judges Farris and D. W. Nelson have voted to reject the suggestion for rehearing en banc and Judge Ferguson recommends rejection.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROGER W. KNIGHT, Plaintiff-Appellant, v. ROYANNE M. KNIGHT and KATHRYN L. KAFKA in her capacity as Assistant Attorney General of the State of Washington, Defendants-Appellees.	) No. 92-35173) D.C. No. C91-949Z) MEMORANDUM*	

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted June 10, 1993**
Seattle, Washington

Before: FARRIS, FERGUSON AND D.W. NELSON, Circuit Judges.

Roger W. Knight brought a 42 U.S.C. §1983

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as provided by Ninth Circuit Rule 36-3.

** Pursuant to Ninth Circuit Rule 34-4, the panel unanimously finds this case suitable for disposition without oral argument.

claim against his ex-wife and the Assistant Attorney General of Washington. He claimed that the Washington child support statutes, R.C.W. 26.18 and 26.19, violate the Constitution and the federal Anti-Peonage Statute, 42 U.S.C. §1994. Knight sought injunctive relief against the Assistant Attorney General to prevent enforcement of the Acts and monetary damages from his ex-wife. The district court granted summary judgment for the defendants.

We affirm.

We review a grant of summary judgment *de novo*. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F. 2d 626, 629 (9th Cir. 1987). The constitutionality of the Child Support Schedule was challenged in *P.O.P.S. v. Gardner*, No. 91-36118. P.O.P.S. argued that the Schedule violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. We rejected those claims. For the reasons set forth in our P.O.P.S. opinion, we reject Knight's substantive and procedural due process and equal protection arguments.

Knight argues that the child support that he is required to pay constitutes a sanction imposed by the legislature based on his status as a father, and therefore, is a Bill of Attainder. The Schedule does not infringe on the judicial function, because it is rebuttable. Contrary to Knight's assertion, the Legislature can require that parents pay *some* support

for their children. The Schedule is not a Bill of Attainder.

Knight challenges R.C.W. 26.18.050 on the grounds that it constitutes involuntary servitude prohibited by the Thirteenth Amendment, and violates the Anti-Peonage Statute, 42 U.S.C. §1994. R.C.W. 26.18.050(4) specifies that an obligor will not be held in contempt if he lacks the means to comply with the support order and has exercised due diligence trying to comply. Contempt proceedings for voluntary failure to comply with court orders are a proper exercise of state power. See *Hicks v. Feiock*, 485 U.S. 624, 638 (1987). The contempt statute does not violate the Thirteenth Amendment or the Anti-Peonage Act.

Affirmed.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROGER W. KNIGHT, Plaintiff,	)	NO. C91-949Z
v.	)	
ROYANNE M. KNIGHT and KATHRYN L. KAFKA, in her capacity as Assistant Attorney General of the State of Washington, Defendants.	)	ORDER

Plaintiff was ordered to pay child support pursuant to a divorce decree. He then brought this §1983 action against his former wife and the Assistant Attorney General involved in the child support proceedings, seeking to have the Washington child support laws declared unconstitutional. The Court granted both defendants' motions for summary judgment in a November 18, 1991 order.

Plaintiff now moves for a new trial or rehearing, and to amend judgment. Plaintiff argues that the Court did not fully consider his arguments, and that it did not address four of the alleged Constitutional violations set forth in the Complaint: (1) the threat of contempt action denies equal protection and thus violates the Fourteenth

Amendment; (2) R.C.W. 74.20A is an unconstitutional bill of attainder; (3) the requirement to pay insurance and education costs beyond those imposed on parents who remain married violates the equal protection clause; and (4) the due process clause requires that Mr. Knight be given custody rather than pay child support, as custody is less burdensome, Plaintiff's Affidavit, pp. 13-14.

For the reasons given below, plaintiff's motion for a new trial or rehearing is DENIED, and the motion to amend is DENIED in part and GRANTED in part. The motion to amend based on the claim that R.C.W. 74.20A.200 is an unconstitutional bill of attainder is GRANTED.

1. Request for a new trial or rehearing

A party may move for a new trial pursuant to Fed. R. Civ. P. 59. The rule is stated in broad terms because the draftsmen found it impractical to list all of the possible grounds for new trial. 11 Wright & Miller, Federal Practice and Procedure: Civil §2805, at 37 (1973). A common ground for a rehearing is an error of law. Any error of law, if prejudicial, is sufficient to warrant a new trial. *Id.* at 38.

Plaintiff argues that the Court misinterpreted the prohibition against bills of attainder, the Washington contempt statute, the anti-peonage statute, and Washington child support laws in general. The Court finds that plaintiff's arguments are simply a rehash of his original arguments, and do

not demonstrate any errors of law. Therefore the motion for a new trial or a rehearing is DENIED.

2. Request to Amend Judgment

Under Fed. R. Civ. P. 52(b), a party may move for the court to amend its findings or make additional findings. Plaintiff argues that the Court did not address four of his arguments in the November 18, 1991 order.

(a)Equal Protection and Due Process Claims

Plaintiff's assertion that the Court did not address his equal protection and due process claims is untrue. The Court stated "For the reasons set forth in the Court's oral decision in *P.O.P.S.*, this Court rejects plaintiff's arguments based on the right to privacy, equal protection, and procedural due process." Court Order, November 18, 1991, p. 7. Therefore, plaintiff's request that the order be amended to address these arguments is DENIED.

(b) Bill of Attainder Claim

The Court rejected plaintiff's argument that the child support schedule violates the Constitutional prohibition against bills of attainder, but the Court did not expressly address the argument that R.C.W. 74.20A is also a bill of attainder. See Court Order, November 18, 1991, pp. 7-8. The Court, therefore, GRANTS in part plaintiff's motion to amend, and adds the following paragraph to the November 18, 1991 order:

"Like the child support schedule, R.C.W. 74.20A does not infringe on the judicial function. Under the statute, the administrative agency merely collects child support assessed in a court order. In addition, the statute provides judicial relief for claims that no support debt is due and owing. R.C.W. 74.20A.200. There is no unconstitutional encroachment on the judicial function, and therefore no bill of attainder."

IT IS SO ORDERED

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this 30th day of January, 1992.

/s/
THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROGER W. KNIGHT, Plaintiff, v. ROYANNE M. KNIGHT and KATHRYN L. KAFKA in her capacity as Assistant Attorney General of the State of Washington, Defendants.	)	NO. C91-949Z ORDER

This matter comes before the Court on Defendant Kafka's motion for summary judgment (docket no. 5), and Defendant Knight's motion for dismissal, summary judgment, and sanctions (docket no. 15). For the reasons stated herein, defendants' motions for summary judgment are GRANTED and final judgment shall be entered in favor of the defendants.

BACKGROUND

Plaintiff was ordered to pay child support pursuant to a divorce decree. Plaintiff now brings this 42 U.S.C. §1983 claim against his ex-wife and the Assistant Attorney General who represents the Department of Social and Health Services, Office of Support Enforcement. Plaintiff claims that the

Washington child support statutes, R.C.W. 26.18 and 26.19, are unconstitutional and violate the federal Anti-Peonage Statute, 42 U.S.C. §1994. Plaintiff seeks injunctive relief, and monetary damages from Defendant Knight. Plaintiff is acting pro se.

Plaintiff argues that the Child Support Schedule, R.C.W. 26.19, violates his rights to procedural due process and equal protection of the laws under the 14th Amendment. Plaintiff also claims that the statute impinges on his right to marry and procreate which are protected by the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. Lastly, plaintiff argues that the support schedule violates the Bill of Attainder Clause, Article 3, section 9(sic).

Plaintiff also challenges R.C.W. 26.18.050 which provides for contempt proceedings and arrest if the obligor fails to comply with a support order. Plaintiff argues that this constitutes involuntary servitude prohibited by the 13th Amendment, and violates the federal Anti-Peonage Statute, 42 U.S.C. §1994.

Defendant Knight seeks dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. In the alternative, defendant Knight seeks summary judgment. Defendant Kafka moves for summary judgment.[1]

ANALYSIS

A. Failure to State a Claim, Fed. R. Civ. P. 12(b)(6).

An action may be dismissed for failure to state a claim only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Keniston v. Roberts*, 717 F. 2d. 1295, 1300 (9th Cir. 1983) quoting *Sherman v. Yakashi*, 549 F. 2d. 1287, 1290 (9th Cir. 1977). Material allegations of the complaint are taken as admitted and the complaint is to be liberally construed in favor of the plaintiff. Id. "A liberal construction of the pleadings is especially called for where they were prepared by a layman." *Dewitt v. Pail*, 366 F. 2d. 682, 685 (9th Cir. 1966). A pleading under the civil rights act must allege more than mere conclusions. The plaintiff must identify the civil rights allegedly violated in his complaint. *Keniston*, 717 F. 2d at 1300. Three issues are raised by defendants' motions seeking to dismiss under Fed. R. Civ. P. 12(b): 1) can plaintiff sue to enjoin state court proceedings, 2) has identified the civil rights violated, and 3) are the defendants proper parties.

(1) The use of 42 U.S.C. §1983 to enjoin

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[1]Defendant Kafka's motion for dismissal under Fed. R. Civ. P. 12(b) was transformed into a motion for summary judgment pursuant to Fed. R. Civ. P. 12(b).

state proceedings.

Plaintiff seeks declaratory and injunctive relief against the enforcement of a state court judgment on the grounds that the decision was based on unconstitutional state law. Plaintiff's complaint relies on 42 U.S.C. §1983 which provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court has held that 42 U.S.C. §1983 can be used to seek injunctive relief against state court proceedings, where it is alleged that state law is being unconstitutionally applied. *Mitchum v. Foster*, 407 U.S. 225 (1972).

Based on the authority of *Mitchum v. Foster*, plaintiff can obtain the relief he seeks if he can show that the Washington statutes regarding child support and dissolution are being unconstitutionally applied.

(2) Has plaintiff identified the civil rights violated?

Defendant Kafka argues that there is a total absence of any allegations whatsoever setting forth what rights of the Plaintiff were violated. This statement is simply untrue. Plaintiff sets forth in his complaint numerous allegations of violations of his constitutional rights.

(3) Are the defendants proper parties?

(a) Assistant Attorney General Kafka.

Under the *Ex Parte Young* doctrine, a federal court may enjoin state officers from enforcing state statutes which violate the Federal Constitution. *Ex Parte Young*, 209 U.S. 203 (1907)(sic). The standard articulated in *Young* for a proper party is a state official who "by virtue of his office, has some connection with the enforcement of the act...) 209 U.S. at 157.(sic, actually 257)

Ms. Kafka meets the *Young* standard. She is an Assistant Attorney General of the State of Washington, and represents the Office of Support Enforcement of the Department of Social and Health Services. Defendant acknowledges that she participated in plaintiff's dissolution proceedings "to protect the Department's lawful, legitimate interest in the appropriate setting of child support." *Id.* at 2. Defendant Kafka is clearly a state officer involved in the enforcement of the child support statutes, and therefore is a proper party to this action.

(b) Royanne Knight

Private use of challenged state procedures with the help of state officials constitutes state action for purposes of the 14th Amendment. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 933 (1982). The Supreme Court has held that private creditors are state actors for purposes of §1983 when they use constitutionally challenged garnishment and prejudgment attachment procedures. *Id.* at 932-33. This case is analogous to *Lugar*. Defendant Knight used constitutionally challenged procedures to obtain child support. Therefore she is a proper party to this case.

Plaintiff has set forth a proper cause of action against proper defendants for which relief can be granted. Defendants' motions for dismissal under Fed. R. Civ. P. 12(b) are therefore DENIED.

B. Summary Judgment

Defendants also move, in the alternative, for summary judgment pursuant to Fed. R. Civ. P. 56. Summary judgment is appropriate only if "the pleadings, dispositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Thus, the question is whether the evidence, together with permissible inferences drawn from that evidence, is sufficient to establish a "genuine issue as to any material fact." *United Steelworkers of*

America v. Phelps Dodge Corp., 865 F. 2d 1539 (9th Cir. 1989), *cert. denied*, 110 S. Ct. 51 (1989). Inferences may be drawn from underlying undisputed facts, such as background or contextual facts, as well as from disputed underlying facts which the judge must assume will be resolved at trial in favor of the nonmoving party. *Phelps Dodge*, 865 F. 2d at 1545.

The facts in this case not in dispute. Plaintiff was ordered to pay child support pursuant to a dissolution decree which determined support based on the Washington statute. The sole issue is whether the state child support laws violate the United States Constitution or the Anti-Peonage Statute.

1. The validity of the Child Support Schedule, R.C.W. 26.19.

The constitutionality of the Child Support Schedule was recently litigated in *P.O.P.S. v. Gardner*, No. C90-5344B (W.D. WA. Sept. 27, 1991) (order granting summary judgment). The plaintiff in *P.O.P.S.* argued that the Child Support Schedule is unconstitutional because it violates separation of powers, the right to privacy, equal protection, and substantive and procedural due process. Plaintiff in this case notes that "There is a great similarity between *P.O.P.S.* and the issues raised in this complaint," Complaint, p. 6.

The District Court in *P.O.P.S.* upheld the constitutionality of R.C.W. 26.19, and granted defendant's motion for summary judgment. For the

reasons set forth in the Court's oral decision in *P.O.P.S.*, this Court rejects plaintiff's arguments based on the right to privacy, equal protection, and procedural due process.

Plaintiff's Bill of Attainder argument was not raised directly in *P.O.P.S.*, however the argument is merely another form of the separation of powers analysis. The Supreme Court, in interpreting the Bill of Attainder Clause, has emphasized that its basic function is to maintain the separation of powers:

> The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply--trial by legislature.

United States v. Brown, 381 U.S. 437, 442 (1965).

Plaintiff argues that the child support he is required to pay constitutes a sanction imposed by Congress based on his status as a father, and therefore is a bill of attainder. The District Court in *P.O.P.S.* held that the legislative presumption regarding levels of support in the statute was rebuttable, and therefore did not infringe on the judicial function. For the same reasons that the District Court in *P.O.P.S.* rejected the separation of

powers argument, this Court rejects plaintiff's claim that the support schedule is an unconstitutional bill of attainder.

2. The validity of the contempt provision, R.C.W. 26.18.050

Plaintiff challenges R.C.W. 26.18.050 on grounds that it constitutes involuntary servitude prohibited by the Thirteenth Amendment, and violates the federal Anti-Peonage Statute, 42 U.S.C. §1994. As a threshold matter, the Court must determine whether the plaintiff's claim is ripe. R.C.W. 26.18.050 provides for contempt proceedings if an obligor fails to comply with a support order. Plaintiff, however, has not alleged that he has been held in contempt or ordered to show cause under the provisions of the statute.

Ripeness involves a two-part inquiry. First, the Court must look at the significance of the harm if review is denied. Where an individual is faced with a choice between foregoing allegedly lawful behavior and risking prosecution, courts will deem a case ripe rather than insist that the individual break the law and risk the consequences. See *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967). Secondly, the Court must look at the fitness of the issues for judicial review. Where the legal question posed is highly speculative and the constitutional issues are not presented in clean-cut and concrete form,

adjudication is improper. See *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972).

In this case, plaintiff risks contempt proceedings for failure to obey the child support decree. The danger of being found guilty of contempt is sufficient to meet the hardship prong of the ripeness test. The second factor also weighs in favor of the plaintiff. The question before the Court is almost purely legal in nature: do contempt charges under R.C.W. 26.18.050 for non-compliance with court ordered child support constitute involuntary servitude or peonage? Since both factors have been met, the issue is ripe for adjudication.

Plaintiff's claims are without merit. The statute specifies that an obligor will not be held in contempt if he or she lacks the means to comply with the support order and has exercised due diligence in trying to render himself or herself able to comply. R.C.W. 26.18.050(4). The Supreme Court has upheld state statutes allowing for contempt charges for nonpayment of child support where the hearing on ability to pay comports with due process. *Hicks v. Feiock.*, 485 U.S. 624 (1988). The Washington statute does not impose a penalty for a good faith inability to pay, but only for inexcusable non-compliance with a court order. A charge of contempt under such a statute does not constitute peonage or involuntary servitude. Contempt proceedings for

failure to comply with court orders are a proper exercise of state power.

For the foregoing reasons, the motions of both defendants for summary judgment are GRANTED and the case is dismissed with prejudice.

Defendants have not shown that the case was brought in bad faith or for an improper purpose. Therefore, the motion for sanctions is DENIED.

IT IS SO ORDERED.

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this 16th, day of November, 1991.

/s/
THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE